3 1761 03319 0422

THE LAW AND COMPUTERS

CORE MATERIALS - 1985

VOLUME II

Compiled by

Daniel G. Cooper

Thomas G. Heintzman

Richard B. Austin

Wendy M. Matheson

and

Richard J. Nathan

These materials have been compiled exclusively for teaching purposes at the Faculty of Law, University of Toronto and are not intended for publication or distribution.

LAW LIBRARY

SEP 23 1985

FACULTY OF LAW

FACULTY OF LAW LIBRARY
UNIVERSITY OF TORONTO

THE LAW AND COMPUTERS

CORE MATERIALS - 1985

VOLUME II

Compiled by

Daniel G. Cooper

Thomas G. Heintzman

Richard B. Austin

Wendy M. Matheson

and

Richard J. Nathan

These materials have been compiled exclusively for teaching purposes at the Faculty of Law, University of Toronto and are not intended for publication or distribution.

THE LAW AND COMPUTERS

Preface
Introduction

Introduction to Computer Technology

Chapter I: The Information Revolution

A. Introduction
B. The Employment Debate
C. The Necessary Response: An Industrial Strategy?
D. The Role of Law

Chapter II: The Technology and Its Industries

A. Overview of Industry Structure
B. Marketing

Chapter III: Information as Property: Private and Public Law Perspectives

A. The Nature of Information
B. Proprietary Rights in Information
C. Equitable Obligations of Good Faith

Chapter IV: Trade Secrets

A. Definition of Trade Secret
B. Historical Development of Trade Secret Law
C. Common Law Protection
D. Legislative Reform

Chapter V: Copyright

A. Copyright in Computer Software
B. Copyright in Computer Output
C. Copyright Infringing Hardware

Chapter VI: Other Statutory Industrial Property

A. Patents
B. Semiconductor Chip Protection
C. Summary

Chapter VII: Information Handling Practices

A. The Right of Privacy
B. Freedom of Information

Chapter VIII: Contracting for Computer Systems

A. Distribution Methodologies
B. Contracting for System Usage
C. Software Development Contracts
D. Service Bureau Contracts
E. Multi-Vendor Agreements

Chapter IX: Commercial Law Perspectives

A. Electronic Funds Transfer System
B. The Canadian Depository for Securities
C. Computerized Shipping Documentation

Chapter X: Remedies

A. Contract
B. Tort

Chapter XI: Computers and the Law of Evidence

A. Computer-based Evidence of an Act or Event
B. Computer Simulations
C. Discovery of Computer Based Information

Chapter XII: The Criminal Law Perspective

A. The Problem Defined
B. The Current Law
C. Justifying the Use of Criminal Law
D. Proposals for Change

Chapter XIII: International Issues

A. Trans-Border Data Flow
B. International Copyright Protection
C. International Taxation Issues
D. International Joint Ventures
E. Controls of Technology Transfers

CHAPTER VIII: CONTRACTING FOR COMPUTER SYSTEMS

		Page No.
-	Introductory Note.	VIII-1
-	Himelson, "Frankly, Incredible: Unconscionability in Computer Contracts", Computer/Law Journal, Vol. IV (1983).	VIII-2
A.	Distribution Methodologies	
-	Gilburne and David, "Structuring Agreements for Vertical Distribution of Software", in Brooks (Chairperson), Computer Law 1982: Acquiring Computer Goods and Services, New York: Practising Law Institute, 1982.	VIII-4
-	Cooper, "System Contracts - Background Materials" in Brooks (Chairperson), Computer Law 1982: Acquiring Computer Goods and Services, New York: Practising Law Institute, 1982.	VIII-13
B.	Contracting for System Usage	
-	Davidson, D.M., "Negotiating Major System Procurements", (1982) 3 Computer/L. J. 385.	VIII-28
C.	Software Development Contracts	
-	Bernacchi, R. and Larsen, G., Data Processing Contracts and the Law, Boston, 1974 at 423-7.	VIII-42
-	Brooks, Daniel T., "Acquisition and Exploitation of Custom Software", June 4, 1984.	VIII-45
D.	Service Bureau Contracts	
-	Gilburne, Miles and Grogan, Alan, "Service Bureau Contracts", in Brooks (Chairperson), Computer Law 1981: Acquiring Computer Goods and Services, New York: Practising Law Institute, 1981.	VIII-56
E.	Multi-Vendor Agreements	
-	Harris, Charles, "Computer Contract Issues in the Acquisition of Hardware and Software", In Third Annual University of Southern California Computer Law Institute, Los Angeles, 1982.	VIII-73

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/lawcomputerscore02coop

CHAPTER IX: COMMERCIAL LAW PERSPECTIVES

		Page No.
-	Introductory Note	IX-1
A.	Electronic Funds Transfer System	
-	Vergari, James V., "Latent Legal Repurcussions in Electronic Financial Services and Transactions", Computer/Law Journal, Vol. V, (1984).	IX-2
-	Crawford, Bradley, "Does Canada Need a Payments Code?", (1982) 7 Can. Bus. L. J. 44.	IX-9
B.	The Canadian Depository for Securities	
-	Harley, D.M., "Central Depository for Securities", (1983) 7 Can. Bus. L. J. 306.	IX-39
C.	Computerized Shipping Documentation	
-	Mapp, Wayne D., "Documentary Problems of Intermodal Transport", (1978) 12 J. World Trade L. 514 at 514-18, 522-29.	IX-61

CHAPTER X: REMEDIES

		Page No.
-	Introductory Note.	X-1
A.	Contract	
-	Burroughs Business Machines Ltd. v. FeedRite Mills (1962) Ltd. (1973), 42 D.L.R. (3d) 303 (Man.C.A.).	X-2
-	Consumers' Association of Canada v. Hamilton-Avret International (Canada) Ltd. and Avret Inc., Dec. 6, 1983, unreported, Ont.S.C.	X-6
-	Listo Products Ltd. v. Philips Electronics Ltd. et al, Dec. 2, 1983, unreported, B.C.S.C.	X-17
B.	Tort	
-	Tapper, Colin, Computer Law, 3rd ed., Longman, New York, 1983, pp.79-95.	X-30
-	Ford Motor Credit Co. v. Swarens, 447 SW 2d 533; 2 C.L.S.R. 347 (Court of Appeals of Kentucky 1969).	X-37
-	Pompeii Estates Inc. v. Consolidated Edison Co. of New York Inc., 7 C.L.S.R. 518 (N.Y.S.C. 1977).	X-39
-	Stagg v. Bank of Breckenridge, 22 Atla. L. Rep. 269; 7 C.L.S.R. 529 (Summit County District Court 1979).	X-42
-	Independent School District No. 454, Fairmont, Minnesota v. Statistical Tabulating Corp., 359 F. Supp. 1095; 5 C.L.S.R. 276 (U.S.D.C., ND Ill, May 31, 1973).	X-43
-	Hall, David A., "Strict Products Liability and Computer Software: Caveat Vendor", Computer/Law Journal, Vol. IV (1983).	X-48
-	Tort Theories in Computer Litigation, The Special Committee for Computers and the Law of the Association of the Bar of the City of New York.	X-62
-	Samuels v. Davis, [1943] 1 K.B. 526.	X-70
-	Fact Situation.	X-73

CHAPTER XI: COMPUTERS AND THE LAW OF EVIDENCE

		Page No.
-	Introductory Note.	XI-1
A.	Computer-based Evidence of an Act or Event	
-	Colin Tapper, Computer Law (3rd ed.), New York, 1983 at 150-1.	XI-2
	(a) The Rule Against Hearsay	
-	Introduction.	XI-4
-	R. v. McMullen (1979) 47 C.C.C. (2d) 499 (Ont. C.A.).	XI-5
-	R. v. Bell and Bruce (1982), 65 C.C.C. (2d) 377 (Ont. C.A.).	XI-13
-	Tecoglas, Inc. v. Domglas, Inc. (1985), unreported S.C.O. decision of June 27, 1985.	XI-16
-	Chasse, Kenneth L., "Evidentiary Issues in Relation to Computer Printouts", Insight Seminar Materials, June 25-26, 1984 (hereafter, Chasse, Computer Evidence).	XI-22
	(b) The Best Evidence Requirement	
-	Chasse, Computer Evidence.	XI-35
	(c) Authentication	
-	Chasse, Computer Evidence.	XI-38
	(d) Proposals for Change	
-	Chasse, Computer Evidence.	XI-40
-	Finaly, John L., "In Defense of Admissibility of Computer Printouts", Insight Seminar, June 25-26, 1984.	XI-44
B.	Computer Simulations	
-	Martha M. Jenkins, "Computer-Generated Evidence Specially Prepared for Use at Trial", (1975) 52 Chicago-Kent L. Rev. 600 at 601-697 (footnotes omitted).	XI-48

CHAPTER XII: THE CRIMINAL LAW PERSPECTIVE

		Page No.
-	Introductory Note.	XII-1
A.	The Problem Defined	
-	Introduction.	XII-2
-	Parker, D. B., Fighting Computer Crime, Scribner's New York, 1983, pp. 884-6.	XII-3
-	"What you should know about Hackers and How to Deter Them", Bank Securities Report, Vol. 12, No. 12, Boston 1983.	XII-6
-	"Computer 'Hacking' Crackdown", Boston Globe, October 24, 1983.	XII-7
-	Canada: House of Commons Standing Committee on Justice and Legal Affairs: Sub-committee on Computer Crime (hereinafter House of Commons Sub-committee on Computer Crime), Proceedings, Issue No. 15, June 1, 1983, Ottawa: Supply and Services, 1983 at 5-11.	XII-9
-	Volgyes, Mary R., "The Investigation, Prosecution and Prevention of Computer Crime: A State-of-the-Art Review", Computer/Law Journal, Vol. II (1980).	XII-13
-	House of Commons Sub-committee on Computer Crime, Proceedings, Issue No. 15, June 1, 1983, Ottawa: Supply and Services, 1983 at 14.	XII-16
B.	The Current Law	
-	Criminal Code, R.S.C. 1970, c. C-34, as amended, ss. 2, 283, 287, 338, 387.	XII-16
-	R. v. McLaughlin (1980), 113 D.L.R. (3d) 386 (S.C.C.).	XII-19
-	R. v. Kirkwood (1983), 5 C.C.C. (3d) 393 (Ont. C.A.).	XII-20
-	R. v. Stewart (1983), 5 C.C.C. (3d) 481 (Ont. C.A.).	XII-21
-	R. v. Fitzpatrick (1984), 11 C.C.C. (3d) 46 (B.C.C.A.).	XII-35
-	Re Turner and the Queen (1984) 13 C.C.C. (3d) 430.	XII-38

CHAPTER XIII: INTERNATIONAL ISSUES

		Page No.
-	Introductory Note.	XIII-1
A.	Trans-Border Data Flow	
-	Bigelow, R., "Transborder Data Flow Barriers", Jurimetrics Journal, Vol. 20, No. 1.	XIII-2
-	McGuire, Richard P., "The Information Age: An Introduction to Transborder Data Flow", Jurimetrics Journal, Vol. 20, No. 1.	XIII-5
-	Millard, Christopher J., "Legal Protection of Computer Programs and Data", 1985.	XIII-7
-	Eger, J., "Emerging Restrictions on Transnational Data Flows: Privacy Protection or Non-Tariff Trade Barriers?", (1978) 10 Law & Pol. Int'l Bus.	XIII-20
-	"Transborder Data Flow: Canadian Directions", Computer Law, Vol. 1, No. 3, March 1984.	XIII-22
B.	International Copyright Protection	
-	Memo by Richard Nathan dated June 6, 1985.	XIII-25
-	Olsson, A. Henry, "Protection of Computer Software in Europe", Software Protection, 1984.	XIII-29
C.	International Taxation Issues	
-	Introduction.	XIII-41
-	The Queen v. Saint John Shipbuilding & Drydock, Ltd., [1980] C.T.C. 352.	XIII-46
D.	International Joint Ventures	
-	Dobkin, James A., "Negotiating an International Technology Joint Venture", April 1985, Arnold & Porter, Washington, D.C.	XIII-51
E.	Controls of Technology Transfers	
-	McInnes, D. Stewart, M. P., "Technology Transfer and the Canadian Business Enterprise", December, 1984.	XIII-59
-	Weinberger, Caspar W., "The Technology Transfer Control Program", A Report to the 98th Congress, February, 1984.	XIII-89